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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1680th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 17 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI

later: Ms. CHANET

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GE.98-16980 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Italy (CCPR/C/103/Add.4; CCPR/C/63/Q/ITA/1/Rev.1) (continued)

1. At the invitation of the Chairperson, the members of the Italian delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the Italian delegation to reply to the questions asked orally by members of the Committee concerning items 1 to 6 of the list of issues to be taken up in connection with the fourth periodic report (CCPR/C/63/Q/ITA/1/Rev.1).

3. Mr. CITARELLA (Italy) said he would begin with the matter of racial discrimination, since the Committee, when concluding its consideration of the third periodic report (see A/49/40, paras. 271-290), had been concerned about the persistent cases of ill-treatment and also racist tendencies vis-à-vis non-European foreigners and persons belonging to minorities. His delegation believed that that concern stemmed from complaints addressed to certain NGOs. His Government had requested the carabinieri to prepare a detailed and analytical record of all cases of alleged ill-treatment suffered by persons under arrest or kept in custody between 1994 and 1997. The study had taken into account all complaints filed against carabinieri on such grounds, regardless of whether the evidence was credible, and it had emerged that 47 of the complaints concerned foreign nationals, from Europe or other regions of the world. The study highlighted what was well known to the authorities and NGOs, namely that foreigners, especially those who were not from the European Union, were less familiar with the safeguards provided by the Italian legal system, since they had not been in Italy very long and tended to report complaints of alleged ill-treatment to NGOs, instead of going through the normal legal channels. There could be no doubt that by publishing the figures of complaints they received, the NGOs did not give the general public an accurate picture of the situation, but exaggerated the number of cases of alleged ill-treatment of foreigners. The report prepared by the carabinieri was a document of approximately 50 pages, which recorded each case separately, and was available to members of the Committee for detailed examination.

4. The delegation had been asked what happened when politicians were implicated in acts that might constitute incitement to racism. Anti-racist legislation applied to everyone in Italy, foreigners and politicians alike. When a member of Parliament or the Government made a statement which amounted to incitement to racial discrimination or any other offence covered by the Anti-Racism Law, criminal action would be taken. In that connection, it should be noted that the scope of immunity enjoyed by members of Parliament had been somewhat reduced.

5. In reply to other questions, he said that inspections of detention centres could be ordered following an article or report indicating that something irregular (ill-treatment, etc.) was going on there. It was first

and foremost the responsibility of the Ministry of Justice to take action; it could immediately appoint special inspectors who would go and verify the situation and, if they found that something was amiss, the matter would be followed up even when only one person was involved. Furthermore, there was a practice in Italy which enabled any member of Parliament to visit a detention centre without notice and request an interview with the person or persons concerned, and subsequently refer the matter to Parliament or the Government if necessary. Lastly, if any breaches of regulations or unlawful acts occurred in the prison, it was primarily the responsibility of the prison governor to take any disciplinary or other measures required.

6. In addition to national procedures, there were those provided for under the European Convention for the Prevention of Torture, which had been ratified by Italy and authorized a special committee to come to Italy, after notifying the authorities beforehand, to visit any detention centre, whether it be a police station or other type of penal institution. The members of the Committee could talk to anyone able to give them information on the general situation in the detention centre; the Committee then drafted a report for the Italian Government, which could draw its own conclusions on the Committee's findings. To date there had been two such inspections in Italy, the most recent in 1996.

7. Italy's cooperation with the International Criminal Tribunal for the Former Yugoslavia was covered by a special law adopted for that purpose. However, so far Italy had not been required to take any action in that connection, since none of the persons facing trial before the Criminal Tribunal at the Hague had been found on Italian territory. Italy had not therefore arrested anyone at the behest of the Tribunal.

8. A question had been asked about the compatibility of life imprisonment with a ruling by the Italian Constitutional Court whereby any person in prison could receive appropriate care so as to allow his reintegration into society upon release. Italy had in fact already decided to abolish life sentences; the maximum penalty would henceforth be 25 years' imprisonment for the most serious crimes. Statistics showed that out of a total of some 50,000 prisoners, only 8 were still serving life sentences. Italy had also taken a number of similar measures, including shorter sentences, home leave, etc.

9. With regard to illegal immigration, it was important to distinguish between the three categories of people who attempted or managed to enter Italian territory. First, those who entered the territory illegally were covered by a new law, under which they could remain in Italy for a minimum period in order to receive assistance or for health control purposes, after which they would be expelled and returned to their country of origin, if necessary. Secondly, persons seeking refugee status were dealt with under a special procedure: a joint committee, composed of representatives of the Italian authorities and a representative of the United Nations in Italy, examined the case and decided whether or not to grant the applicant refugee status. Thirdly, asylum-seekers had their case examined by the Italian authorities, who decided, in accordance with the Constitution, whether the case should be followed up; if so, the decision was the subject of a special decree.

10. Questions had been asked on the subject of torture, in particular to ascertain why torture was not classified as an offence under Italian criminal law. In Italy, as in many other European countries, there was a technical obstacle. In accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the term "torture" meant any act by which severe pain or suffering, whether physical or mental, was intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or intimidating him, by a public official or other person acting in an official capacity. However, under the Italian Criminal Code, any public official or member of the security forces who inflicted injury or suffering on a person placed under his supervision could be prosecuted, irrespective of the intent of the action. Consequently, adopting the definition of torture given in the Convention would enable the perpetrators of such acts to escape the rigours of the law more easily than at present. Hence the reluctance of the Italian authorities so far to adopt the definition of torture given in the Convention, although Italy was moving in that direction.

11. The reservations expressed by Italy when ratifying the Covenant had been mentioned. With the introduction of the new Criminal Code, Italy might be able to review the reservations with a view to their withdrawal. One of them concerned the discriminatory treatment against certain members of the former royal family of Italy, who were banned from entering and staying in Italy. That prohibition was enshrined in the Constitution. The withdrawal of the reservation would require a special procedure, but draft legislation had been submitted to Parliament with a view to removal of that restriction.

12. There had been questions about statistical projections or estimates on the consequences of the entry into force of the law of August 1995, which should reduce the number of persons held in detention; a reduction of 15 to 20 per cent had been mentioned. In fact, when the Italian Parliament had considered the law, a study had been undertaken on the different categories of prisoners; from that study it had emerged that most of them were imprisoned for minor offences such as theft, which carried sentences of less than three years. It was too early to assess the consequences of the law, however. Even before it had been promulgated, any person held in detention had been able to request a shorter sentence or a change in the prison regime, and to be allowed to serve his sentence at home, for example. The new element introduced by the law was that if the prisoner so requested, the judge must authorize his release from prison; the decision was no longer left to the judge's discretion.

13. Ms. ANTONELLI (Italy) provided details on the activities of the Ministry for Equal Opportunities (paragraph 25 of the report). Italy had ratified ILO Convention No. 100 on Equal Remuneration, which prohibited it from paying different remuneration to men and women performing the same duties in the same occupational sector. Article 2 of Law No. 903/77 prohibited any form of discrimination between men and women. Moreover, Law No. 125/91 introduced the notion of indirect discrimination by making it incumbent upon the employer to prove that he had not practised discrimination. The basic problem, however, was knowing whether the law effectively established genuine parity between men and women with regard to remuneration. In 1993, male workers' average

remuneration had been 37.5 million lire and women's 30 million lire, a 13 per cent difference, with the same qualifications. Those differences prevailed in all sectors and for a variety of qualifications, but were most marked at the lowest and highest grades. Women accounted for one third of the Italian labour force, but their participation was 60 per cent in services to firms and individuals and in the textile industry. The disparity between the remuneration of men and women was smaller in sectors such as commerce, transport and communications (between 5 and 8 per cent) and larger in the lending and services sector (25 per cent). The difference was due to structural factors (with a higher proportion of women in the poorly paid sectors), contractual factors (women being confined to subordinate positions, for the most part) and factors connected with working hours (women worked less overtime). The surveys conducted were virtually unanimous in concluding that "cultural" problems persisted in firms, which did not readily entrust jobs involving responsibility and coordination - in other words, executive jobs - to women, and that that situation stemmed from the fact that women were less free to adapt to the flexible hours required by firms. That related to the problem of the double working day of women, who needed to reconcile family and employment.

14. Bearing in mind the aforementioned Italian legislation, the Government must engage in collective bargaining, the mainstay of wage-setting, in order to eliminate the various forms of de facto discrimination and demolish the barriers that stood in the way of genuine equality of treatment. That commitment, reiterated at all levels of the dialogue between management and labour and, most recently, in the September 1996 "Covenant for Work", was made manifest in the establishment of the new Ministry for Equal Opportunities. Her delegation acknowledged the existence of a cultural problem regarding equal opportunities in present-day society; for that reason, Italy attached great importance to "affirmative" action as provided for by Law No. 125/91, which dealt, in particular, with the financing of measures concerning flexible working hours, systems designed to improve women's qualifications and their technical training through subsidies to firms.

15. A National Equality Committee had been set up under the Ministry of Labour and comprised representatives of the Government, employers and unions, with competence in matters relating to women's work and the implementation of Law No. 125/91, and also for affirmative action measures. There were also equality counsellors at the local and central levels, appointed by the Ministry of Labour and by the local authorities, who could represent before the courts female workers who were victims of discrimination.

16. With regard to sexual harassment, the Italian Senate had lately passed a bill which was currently before the Chamber of Deputies and the European Code of Conduct concerning Sexual Harassment had been disseminated in Italy. Likewise, numerous national collective agreements provided protection in that area for women workers.

17. In Italy there were many independent bodies concerned with matters of gender discrimination. First of all, there was the National Commission for Equal Opportunities, established under the Office of the President of the Council of Ministers and comprising representatives of political parties, trade unions, employers, women's associations and experts on that subject.

That Commission was concerned with women's rights in general and family law; its remit was also to monitor and promote the image of women in the press and other media, and encourage the use of non-discriminatory terms and neologisms. Women's role in the decision-making process and, more particularly, their participation in politics were limited: there were 8 per cent of women in the Chamber of Deputies and 9 per cent in the Senate. That situation was due partly to the change in the electoral system and partly to the Constitutional Court's decision abolishing the quota system. A similar situation prevailed in local administration, and the regional and municipal councils. However, the number of women ministers had increased, and at the local level too women occupied more posts carrying managerial responsibility.

18. Women were represented at a high level in industry: the Association of Young Entrepreneurs in the Garment Industry had a woman president and women accounted for 16 per cent of self-employed workers.

19. Social welfare policy, and particularly the reform of the pension system, affected women in that the retirement age had been raised, although it did not have a direct effect on their level of affluence. Conversely, the Government had raised the family allowances paid to large families in order to offset the effects of the economic crisis on the poorest sectors of the population.

20. Mr. CITARELLA (Italy) confirmed that Italian immigration law was in keeping with the principles and tenor of the Schengen agreement, although the agreement allowed States five years in which to determine their immigration policy.

21. It was a long-standing practice that virtually all persons in pre-trial detention were separated from convicted prisoners. Committee members having remarked that Italy's report provided information essentially on laws and administrative measures but was short on statistics, his delegation was placing at their disposal statistics compiled by the Ministry of Justice on the prison population in Italy at 27 January 1998. The total prison population at that date was 50,093, broken down into five categories, (awaiting trial, having filed an appeal, subject of a final sentence, etc.). The delegation was also placing at the disposal of members statistics on foreign detainees in Italian prisons at 30 April 1998; their total number was slightly over 11,000, or one fifth of the total prison population. Those statistics also emanated from the Ministry of Justice and were broken down by nationality.

22. Committee members had made a general observation concerning the allegations of torture and ill-treatment in Somalia. An investigation had been initiated by the Ministry of Defence, which had not yet delivered its findings. All the cases of torture had been submitted to the national jurisdictions of Livorno and Milan, which had initiated pre-trial investigations. With regard to the procedure instituted to shed light on the torture allegedly inflicted by Italian soldiers in the Johar camp, and on the rape of a Somalian woman at a roadblock in Mogadishu, a preliminary hearing had been organized by a judge, who had heard the statements of the victims and another witness. Medical examinations had also been conducted. The Milan Prosecutor's Office was continuing the investigation into a case of rape by an

Italian soldier in Mogadishu. The final decision on continuation or closure of the case should be delivered by the end of the year. With regard to the individual cases cited by Committee members, his delegation could not supply much detail about Salvatore Marino, except to say that 13 years had indeed passed before a final decision had been taken. The case was very unusual inasmuch as the policemen accused of torture had been charged, and sentenced in the lower and upper courts on two occasions, on both of which the Court of Cassation had quashed the sentence. As to Marcello Alessi, detained at San Michele prison in Alessandria, who in December 1992 had filed a complaint of ill-treatment by a warder, his delegation would place a copy of the sentence at the disposal of Committee members. Following a detailed study of all the statements made by Marcello Alessi and the warder accused of ill-treatment, the detainee had been tried and found guilty of violence against public authority but acquitted of the offence of contempt of public authority. Since Marcello Alessi had not taken his case to the Court of Cassation, the judgement had become final on 25 February 1997. The proceedings against the warder were pending i. the court of minor jurisdiction in Alessandria and the hearing had been postponed; the outcome was still unknown. His delegation thought that it had now answered all the written and oral questions in the first part of the list of issues with one important exception, the issue of pre-trial detention. The reply would be given later in the meeting.

23. In response to Lord COLVILLE, the CHAIRPERSON confirmed that the documents from the Penitentiary Administration Department of the Ministry of Justice providing details on the prison population at 27 January 1998, as announced by the Italian delegation, were being distributed to Committee members.

24. Mr. KRETZMER said that he had asked about the exact procedure used in investigating complaints against police officers. However, his concerns had not been dispelled by the document distributed by the delegation, from which he noted that 83 per cent of complaints had been closed, in other words dismissed, at the very beginning of the procedure. It also seemed that when a complaint was investigated, instead of the investigation resulting in a reprimand for those concerned, proceedings were initiated against the person filing the complaint, which did not encourage victims to report abuses of authority. He would therefore like further details on the full procedure followed in the case of such complaints, as it seemed highly unlikely that most complaints against the police were totally unfounded and could be closed without further action.

25. Mr. CITARELLA (Italy) said he was perfectly aware of the need to subject each case to detailed examination; if the Committee so wished, a detailed analysis could be made with a view to the next report, but the delegation could already explain the procedure: from the moment a complaint was brought against any member of a police force or the security forces, the matter was referred to a judge. The complaint did not languish in a drawer and was never closed by an administrative authority. The judge could hear witnesses and evaluate the facts in order to determine whether the matter should be pursued or closed, which was most often the case.

26. The CHAIRPERSON invited the Italian delegation to answer questions 7 to 13 on the list of issues.

27. Mr. CITARELLA (Italy), taking up the question of the dissemination of the Covenant (question 7 on the list) and, more particularly, the question of the functions and activities of the Committee for the Protection of Human Rights of the Accademia Nazionale dei Lincei, said that that institute had completed the study it had begun in 1980; all the information collected and conclusions reached had been transmitted to the Government, which was to take measures in response to the recommendations. For instance, the Cabinet of the Prime Minister had had 25,000 copies of the survey distributed to all the competent national official organs so as to elicit their reactions and possible suggestions. In addition, all higher education establishments provided courses on human rights, including information on the Universal Declaration, the two Covenants and the other major United Nations and Council of Europe instruments, during the second and third cycles. Every year special human rights courses were organized for all members of the police and security forces, and handbooks specially prepared for them. The same went for judges, for whom internal committees of the Ministry of Justice were responsible for organizing seminars on the promotion of human rights. In Italy's main cities seminars on the defence of human rights were also organized for members of the Bar. Under a recent decree adopted two years previously, the Interministerial Committee for Human Rights had been given an additional mandate. It was now competent to advise the Government on measures to be taken to promote fundamental rights. One of the recommendations already approved was the incorporation of torture as a specific offence in the Criminal Code. Another recommendation concerned the establishment of a national ombudsman, an area covered in another question on the list. Lastly, the Italian Red Cross periodically organized courses for members of the armed forces, considerable parts of which were devoted to fundamental rights and humanitarian law.

28. Turning to the question of the appointment of a national ombudsman and the functioning of the regional ombudsman system (questions 8 (a) and (b) on the list), he remarked that a law had made it virtually obligatory for all municipalities and regional bodies to have a local ombudsman's office - more accurately called a Citizens' defence counsel (Defensore civico). Hence, each region had an ombudsman, who received all complaints from individuals or organizations concerning the competence or action of the local authorities. The regional ombudsmen reported annually to the regional authorities and to Parliament on their activities. It had quickly been realized that there was a need for a common approach for all ombudsmen and that they should have the same powers, for which reason a council of regional ombudsmen had been set up. The ombudsmen met regularly to exchange ideas and attempt to harmonize their activities; the system functioned well. On the other hand, major constitutional difficulties were still impeding the establishment of a national ombudsman. There were fears of a conflict of interest between that institution and the judiciary. The text of a bill listing the conditions for the establishment, and the powers, of the national ombudsman had gone to Parliament, and preparation of the constitutional provisions had begun. The draft constitutional provisions established three different institutions for the defence of citizens: the Constitutional Court, the judiciary and the national ombudsman. Hence, the risk of interference came from the judge, but the matter should be settled shortly.

29. Telephone-tapping (question 9, concerning privacy) must be authorized by a judge, who was required to justify his decision; in cases of extreme urgency, the decision was taken by the Office of the Public Prosecutor and the procedure needed to be validated by the judge within 48 hours. Telephone-tapping was only authorized for serious offences and when there were reliable indications that an offence had been committed and that such intervention was vital to the investigation. Tapping was authorized for a maximum of 15 days but could be extended on the authorization of the judge. A record of tapped conversations was deposited with the Office of the Public Prosecutor within 15 days following the transcription, and the defence counsel must be notified. The transcription must be made in the forms and with the guarantees laid down for expert reports. The judge could refuse to authorize telephone-tapping if he deemed that the requirements were not met. Authorization was often refused. In the wake of cases of indiscretion on the part of the press, which had published sizeable extracts of tapped conversations, the Government had drawn up a bill designed to remove the weak points in current legislation and guarantee total secrecy of tapped conversations.

30. With regard to freedom of thought, conscience and religion (question 10), the National Observatory on Religious Freedom established two years previously had two functions. First, it was responsible for inventorying all new religious movements that did not come under the Catholic faith; it had inventoried 60 types of religious organization, some of which had juridical personality as recognized associations, while others did not. Its second task was to answer all questions raised by the public authorities and examine individual or collective complaints concerning religious freedom. His Government had concluded agreements with a number of churches and religious institutions of all kinds. Parliament currently had before it a bill containing provisions relating to religious freedom and abrogating current legislation on authorized cults. Where the distinction between a religious movement and a sect was concerned, a protracted debate had taken place to determine whether sects should be regarded as religious movements; thinking on the subject was led by judges, even at the highest level of the Constitutional Court. That thinking had culminated in the formulation of criteria for drawing a clear distinction between religious movements or sects and other institutions which appeared to be religious but were not in fact so.

31. Question 11 dealt with the 13 February 1993 decision of the Supreme Court removing the competence of ecclesiastical courts to decide on the nullity of Catholic marriages. Italian judges, as well as the ecclesiastical authorities, were now competent to examine complaints concerning the nullity of marriages solemnized under the Concordat and to rule accordingly, a decision that had consequences recognized by the authorities of the other party.

32. With regard to the rights of minorities (question 12), he recalled that during consideration of the third periodic report his delegation had referred to preparation of a bill on the status of minorities in general, i.e. a sort of comprehensive law setting forth the rights and obligations of all minorities. That bill had never reached Parliament for a variety of reasons. On the other hand, on 17 June 1998 the Chamber of Deputies had approved a bill on the protection of minorities, which was currently at the reading stage in

the Senate with a view to its final adoption. The purpose of that bill was to promote the implementation of article 6 of the Constitution and bring domestic law into line with all the general principles defended by the international bodies. Linguistic minorities were not large in Italy. They were seen as making a major contribution to Italian culture. A distinction was drawn between two main linguistic strains: the Alpine (French, Provençal, Rhaeto-Romanic and the Friuli dialect, present throughout the Alps, in Friuli-Venezia Giulia and Valle d'Aosta), and the Mediterranean (Catalan, Croat, Albanian, Greek minority, mainly present in Sardinia, Sicily and some southern regions). The bill recognized Italian as the official language, but also recognized other languages protected by a long tradition of clearly established communities. The bill further recognized the right to use minority languages alongside Italian in education. The use of minority languages was also authorized in all activities of the municipal councils and other administrative organs. Lastly, with regard to the Slovene minority in Friuli-Venezia Giulia, a special bill had recently been submitted to Parliament for its consideration. Italy had ratified the Additional Protocol on the Rights of Minorities to the European Convention on Human Rights, adopted by the Council of Europe in 1994.

33. In conclusion, in reply to question 13, the Committee would recall that Italy had not instituted a specific system for following up the former's observations when, after examining a communication, it deemed that the author was entitled to redress. The Committee had received only seven or eight communications concerning Italy and, in all the cases in which it had recommended redress, its decision had been immediately executed without need for a particular legal mechanism.

34. Mr. El Shafei took the Chair.

35. Ms. MEDINA QUIROGA said she would like to know whether certain differences would continue under the new legislation on the status of the Catholic Church. For instance, would the Catholic Church maintain its juridical personality in relation to other churches? Would instruction in the Catholic religion continue in State schools? And would certain of the Catholic Church's activities subsidized by the State be maintained?

36. Mr. KLEIN asked about certain aspects of religious freedom. He had read in paragraph 153 of the report (CCPR/C/103/Add.4) that, in addition to the Catholic religion, there were about 350 cults in Italy, and in paragraph 165 that all members of the various religions or denominations had the right to receive public grants. Should one deduce that that right applied to the 350 cults? And had the competent authorities already received any such requests? On the subject of respect for ritual obligations, he would like to know whether Muslim girls were obliged to participate at the same time as boys in school sports such as athletics, swimming, etc. Were the authorities paying special attention to the problems posed by Islam with regard to mixed schools?

37. Mr. BHAGWATI said he understood that there was a mechanism for determining refugee status and wished to know exactly what form it took: was it a judicial organ or an administrative body? Also, while a person who had applied for refugee status was awaiting the decision, could he travel freely

around the country or was he confined to a specific residence? Was the decision subject to appeal? He also wondered about the role and training of justices of the peace and looked forward to the Italian delegation's remarks on that subject. Seminars on human rights issues had been organized for magistrates; he wished to know whether such training for members of the judiciary was provided as a matter of course, at what stage in their careers, and in what context. More particularly, were there forums in which judges examined the implementation of the international human rights instruments?

38. Regarding the institution of ombudsman, he wondered about the field of competence of the regional ombudsmen. The Italian delegation had also voiced the authorities' fears of a possible conflict of competence between a national ombudsman and the judiciary. He did not share that fear, inasmuch as a national ombudsman would examine the justification for administrative decisions, while the judiciary was called upon to deal with points of law. Despite the Italian Government's apprehensions, were there any plans to create the post of national ombudsman, empowered in particular to rule on governmental measures?

39. In conclusion, he wished to know the composition of the Committee for the Protection of Human Rights of the Accademia Nazionale dei Lincei and asked what degree of independence that body enjoyed, whether it was empowered to receive complaints from individuals who considered themselves victims of human rights violations, and whether it could initiate an inquiry and order compensation.

40. Ms. GAITAN DE POMBO welcomed Italy's ratification of the Second Optional Protocol to the Covenant aimed at abolition of the death penalty; the Protocol represented an essential element in protection of the right to life. In that regard, Italy could serve as an example to other States.

41. Concerning dissemination of the Covenant, she had listened with interest to the information supplied by the Italian delegation and particularly welcomed the action undertaken by the Italian Red Cross, particularly the San Remo Institute, where a number of senior officials from Colombia and other Latin American countries had received human rights training. She asked whether issues pertaining to human rights and humanitarian international law were also included in the training received by Italian public officials and servants of the State involved, or likely to be involved, in peacekeeping operations.

42. Despite the adoption of new legislation, manifestations of anti-Semitism and racial hatred and violence had not disappeared and were even on the increase. In that connection, what had been the impact of the seminars, symposiums, round tables and conferences organized on human rights in general and the rights of minorities in particular? She would like to hear the Italian authorities' assessment.

43. Ms. Chanet resumed the Chair.

44. Mr. ANDO recalled that Italy's third periodic report (CCPR/C/64/Add.8) had contained information that betokened a measure of reflection by the authorities on the question of media concentration. In the suggestions and

recommendations made by the Committee following examination of the report (see document A/49/40, para. 287), it had stressed the importance of measures to ensure the impartial allocation of resources and the adoption of antitrust legislation governing the media. However, in the fourth periodic report the implementation of article 19 of the Covenant had been consigned to a single paragraph and nothing was said about the question of media concentration. He would like to hear the Italian delegation's observations on that point and, in particular, to learn how many public and private television channels and radio stations there were. On the legislative front, what developments had there been in the period since the third periodic report had been considered? As he understood it, the two initiatives mentioned in paragraph 169 of the report dealt with matters relating to racial hatred; he would like to know what follow-up action had been taken.

45. Mr. SCHEININ asked whether it was a fact that a person wishing to obtain the status of conscientious objector or to perform civilian service had very little time in which to make such a request. Would that explain why someone could only seek conscientious objector status once he had begun his military service?

46. Ms. EVATT endorsed the questions raised by Mr. Ando concerning media concentration and the Italian Government's follow-up to the recommendations made by the Committee following consideration of the third periodic report.

47. She noted that no paragraph of the report had been devoted to article 8 of the Covenant. Was one to conclude that Italy was not affected by the phenomenon, sadly very widespread in Europe, of traffic in women who were given over, by force or deceit, to prostitution? If, on the other hand, Italy did experience that problem, what measures had the Government taken to protect such women?

48. The CHAIRPERSON invited the Italian delegation to reply to members' oral questions and gave the floor to Ms. Barberini, of the Italian Ministry of Justice, for additional information on the provisions governing pre-trial detention in Italy.

49. Ms. BARBERINI (Italy) explained that "preventive detention" was a measure applied prior to pronouncement of the final judgement. A person could be placed in preventive detention following arrest by the police, or on the basis of a court order. In the former case, the police had to inform the accused of his right to choose legal counsel, who was immediately notified of the arrest. The police could not keep a suspect on police premises for more than 24 hours. In the 48 hours following the arrest, the Public Prosecutor's Office must ask the examining magistrate to rule on the legality of the detention and, if appropriate, issue a preventive detention order. The examining magistrate responded to both those requests within 48 hours, and the preventive detention order was issued after initial questioning, which took place in the presence of counsel. In the second scenario, when the detention did not follow police custody, the suspect's initial interview took place within five days at the most. Detention could be ordered if there were serious indications that a person had committed an offence, or if there was a threat to the gathering of evidence, risk of flight, or a danger that the offence would be repeated. She referred Committee members to paragraphs 36

and 39 et seq. of the report for further information, adding that the amendments made to the pertinent legislation by Law No. 332/1995 were all geared to limiting pre-trial detention. The maximum duration of such detention was established by article 303 of the Code of Criminal Procedure and depended essentially on the seriousness of the offence concerned. It could not exceed 2 years in the case of an offence punishable by a sentence of less than 6 years' imprisonment, 4 years for an offence punishable by 6 to 20 years' imprisonment, and 6 years if the offence carried life imprisonment. In all cases, a person in preventive detention could apply for it to be rescinded, a request on which the judge must rule within five days. Moreover, persons in preventive detention were segregated from convicted prisoners and placed in separate establishments.

50. Turning to certain paragraphs of the report which had clearly given rise to misunderstanding and called for clarification, she said that paragraph 37 should be interpreted in the following manner. Article 104 of the Code of Criminal Procedure provided that, in principle, any person held in preventive detention could immediately contact a lawyer. However, in exceptional circumstances the judge could, at the prosecutor's request, prohibit communication with the lawyer for a specific period not exceeding five days. Paragraph 39 (e) of the report set forth a general principle of Italian law whereby the refusal of the person under investigation or the accused to make a statement or to admit guilt could not be considered in itself to constitute an actual threat to the gathering of evidence. In other words, such a refusal could not be used against the person under investigation or the accused. She called attention to paragraph 51 of the report, whose infelicitous wording had been a source of confusion. In actual fact, article 301 of the Code of Criminal Procedure dealt not with the end of the overall detention period, but with the end of a period of preventive detention ordered for the purpose of gathering evidence. That article provided that, in such a case, preventive detention could not exceed 30 days, save in the case of proceedings relating to organized crime or crimes committed in connection with organized crime. In his order, the examining magistrate was required to specify the duration of the preventive detention, even in cases of organized crime.

51. Paragraph 52 of the report dealt with suspension of the maximum period of preventive detention. In all cases, whether or not the rule was suspended, the duration of preventive detention could not exceed the limits she had indicated earlier.

52. Article 286 *bis* of the Code of Criminal Procedure, the tenor of which was set out in paragraph 79 of the report, dealt solely with preventive detention and contained no provisions relating to post-trial detention. By and large, the fact of suffering from AIDS in no way affected implementation of the provisions pertaining to the duration of post-trial detention. She referred Committee members to her delegation's replies to question 3 (c) of the list of issues.

53. Paragraph 84 of the report referred only to drug addicts sentenced to imprisonment, and not to AIDS sufferers. That having been said, the provisions relating to the maximum period of preventive detention applied in the same way to drug addicts and to AIDS sufferers.

54. The prohibition of pre-trial detention in the case of a likely suspended sentence applied in all cases; suspension could only be granted in the case of a first offender, and provided that the offence committed carried a sentence of less than two years' imprisonment.

55. Mr. CITARELLA (Italy) said that article 314 of the Code of Criminal Procedure provided for a right of redress in the event of unlawful preventive detention. Any person found innocent in a final judgement which established that the crime had not been committed, that the accused was not the perpetrator or that the acts had not constituted an offence at the time when the procedure had been initiated, could claim compensation. Moreover, the legislation provided that any person unlawfully placed in preventive detention could be rehabilitated and given his job back.

56. Mr. KRETZMER asked whether the magistrate ordering preventive detention was the same as the one hearing the case. What percentage of persons placed in preventive detention were convicted and what percentage were acquitted? Whereas the delegation claimed that persons unlawfully placed in preventive detention enjoyed the right of redress and return to their jobs, the right of redress appeared to be subject to other conditions, and it seemed doubtful whether a person could resume his job after an absence of up to six years in the most serious cases. Lastly, he requested comparative statistics on the duration of preventive detention and the sentence passed by the court.

57. Ms. MEDINA QUIROGA said that, in essence, the period of preventive detention could not be fixed in advance. Paragraph 79 of the report said that "incompatibility caused by HIV infection shall be assessed by the court taking account of the remaining period of preventive detention to be served", as though that were a period determined by the judge. Was it possible for someone to be sentenced, so to speak, to preventive detention?

58. Lord COLVILLE said that the provisions of article 9, paragraph 3, of the Covenant were clear: anyone arrested must be brought before a judge within a reasonable time or be released. Four years could not be said to constitute a reasonable time. He therefore wondered whether there was not any appeal procedure and whether, if appropriate, detention orders successively issued by the same examining magistrate could not be monitored by another magistrate, a higher court or a court of appeal, for instance.

59. Mr. BHAGWATI said he shared Lord Colville's concerns regarding a possible infringement of article 9, paragraph 3, of the Covenant. He also wished to know what exceptional reasons would justify extending to five days the period during which a person in preventive detention could not contact his lawyer, and whether it was the prosecutor or the examining magistrate who took that decision. It would be useful to know the number of cases in which those exceptional reasons had been invoked.

60. Ms. BARBERINI (Italy) explained that the judge who ordered preventive detention was not the magistrate who heard the case. Preventive detention designated the period of detention up to pronouncement of the final sentence,

in other words the point where all remedies had been exhausted. The maximum period of detention was therefore the entire period during which a person was detained up to the decision of the Court of Appeal if an appeal was made to that body.

61. Mr. CITARELLA (Italy), replying to the question as to what avenues existed for shortening or avoiding preventive detention, said that there was a special court known as the Tribunal della Libertá, to which any person placed in detention could immediately appeal and which determined, quite independently, whether the person should be kept in detention in the interests of justice or released.

62. Ms. BARBERINI (Italy) added that an arrested person's right to communicate with his lawyer was a systematic right that could be exercised forthwith, but its exercise could also be suspended for precise, exceptional reasons. The decision not to authorize an arrested person to communicate with a lawyer was taken, at the request of the Public Prosecutor's Office, by the judge, who was called upon to set down his reasons in writing; those reasons were generally linked to a threat to the gathering of evidence.

63. Mr. CITARELLA (Italy), replying to several questions concerning religious freedom, said that until fairly recently Catholicism had been considered the State religion. That was no longer the case and all religions were now on an equal footing. The Italian State had therefore decided to sign bilateral agreements stipulating the rights and obligations of both parties with the organs of the main religious denominations. Under those agreements, any taxpayer could donate each year to the Church of his choice 0.8 per cent of the amount of taxes for which he was liable. The reason why no agreement of that kind had been entered into with Islam was that it had no independent decision-making organ, although Rome happened to be the site of the largest mosque in Europe. There was nothing to stop girls attending any school of their choice, and all religions could set up their own schools. The obligation to receive one hour's instruction per week in the Catholic religion had been abolished in secular schools.

64. Mr. PIERANGELINI (Italy) said that the procedure for processing asylum requests, which complied with international norms, already allowed for cooperation between Italy and the Office of the High Commissioner for Refugees. Any denials of the right to asylum could be referred to a committee of appeal.

65. Mr. CITARELLA (Italy) said that, rather like the Académie française, the Accademia Nazionale dei Lincei was an independent academic institution composed of specialists in all fields of culture and science. It published studies and works on a variety of questions, but had no specific mandate.

66. As to conscientious objection, any citizen wishing to opt for civilian service in lieu of military service must give notice of that fact at least 60 days before conscription. However, the law was silent on the possibility of changing one's mind during military service. On the subject of

the media, a number of enactments had been adopted and limited participation in various economic activities connected with the press to 25 per cent. Likewise, the recently established National Radio and Television Authority was responsible for ensuring the media's observance of the law, especially during election periods.

67. Mr. PIERANGELINI (Italy), replying to the question on the traffic in women, said that it was a problem whose international dimension called for an international solution. That traffic was conducted by international networks of Albanians, according to police reports. The Russian mafia's responsibility had also been mentioned.

68. Mr. CITARELLA (Italy) said that Italian judges, who considered such traffic to be a form of slavery, applied with outstanding consistency the international rules relating to the suppression of slavery.

69. The CHAIRPERSON announced that the Committee had completed consideration of Italy's fourth periodic report and thanked the Italian delegation for its receptiveness. She expressed satisfaction with the positive points noted, particularly the role of the Constitutional Court in the promotion and defence of human rights, Italy's successful struggle to abolish the death penalty, and its accession to the Second Optional Protocol. Clearly, Italy was fully aware of the provisions of article 10, paragraph 3, whereby the penitentiary system should be concerned with the rehabilitation of prisoners rather than their exclusion.

70. However, no progress had been made in other fields since the submission of the third periodic report. For instance, the reservations expressed by Italy at the time of ratification of the Covenant had not yet been withdrawn and no national ombudsman had yet been appointed. While the period during which persons in pre-trial detention were forbidden to contact their lawyers had been reduced from seven to five days, it was still too long. Italy had still not made torture a separate offence, and little progress had been made in action to combat racism and to promote equality between men and women, notably in the workplace.

71. On the vexed question of preventive detention, it must be realized that the establishment of a high maximum period and linkage of detention to the penalty incurred undermined the principle of presumption of innocence and the notion of reasonable time. What was perhaps required was the establishment of a period that remained within the limits of reasonable time and did not change according to the penalty.

72. Mr. ALESSI (Italy) said that the dialogue between the Committee and his delegation had been rewarding and that the pertinent questions asked by Committee members attested to the care with which they had studied Italy's report. In the context of the fiftieth anniversary of the Universal Declaration of Human Rights, his Government had two objectives: to help establish a human rights culture in Italy, and to undertake a serious and conscientious examination of the implementation of international human rights

provisions. That work, which had already begun, consisted in reviewing the reservations expressed at the time of ratification of all the international instruments to which Italy was a party and inventorying the lacunae, not only at the legislative level, but also with regard to institution-building and the implementation of human rights standards. Through their questions, the Committee members had assisted in that task by calling his delegation's attention to lacunae and difficulties. His delegation thanked them and remained at their disposal for any additional information they might wish to have.

73. The Italian delegation withdrew.

The meeting rose at 6.05 p.m.